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***Via Certified mail -
Return Receipt Requested***

July 6, 2020

Mike Quecke, Wastewater and Facilities Superintendent
Head of Agency
Tamalpais Community Services District
305 Bell Lane
Mill Valley, CA 94941

Matt McMahon, President of the Board
Members of the Board of Directors
Tamalpais Community Services District
305 Bell Lane
Mill Valley, CA 94941

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)**

Dear Mr. Quecke, Mr. McMahon, Members of the Board, and Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of your sewage collection system.

River Watch hereby places Tamalpais Community Services District ("District") as owner and operator of its sewage collection system on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Region, Water Quality Control Plan

("Basin Plan") as the result of alleged unlawful discharges from the District's sewer pipelines to Coyote Creek, Richardson Bay, San Francisco Bay and the Pacific Ocean - all waters of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. River Watch contends the District violates the CWA by discharging pollutants from a point source to a water of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit or otherwise complying with CWA §§ 301(a) and 505 (a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that enforcement can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch has identified discharges of sewage from the District's sewage collection system to waters of the United States, without an NPDES permit, in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. The Activity Alleged to Constitute a Violation

River Watch contends that from July 1, 2015 to the present, the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have the likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting of Discharges, and Failure to Mitigate Impacts

i. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above-ground from the collection system, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the District, all in violation of the CWA. The District’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains connected to adjacent surface waters including Coyote Creek, Richardson Bay, San Francisco Bay and the Pacific Ocean.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as **72** with **81,599** “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the District admits at least **61,809** gallons, or **75%** of the total, reached a surface water. This discharge poses both a nuisance pursuant to California Water Code § 13050(m) as well as an imminent and substantial endangerment to health and the environment.

Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

- March 10, 2016 (Event ID# 822853), a spill of 63,900 gallons caused by “root intrusion” occurred at “Ash St at Shoreline Hwy.” Of this total amount, the District reported 6,025 gallons as recovered, 6,900 gallons reaching land, and 57,000 gallons reaching a Coyote Creek drainage channel.
- January 1, 2017 (Event ID# 831811), a spill of 1,000 gallons occurred at “300 Tennessee Ave” due to “debris from lateral”. Of this total amount, the District reported 400 gallons as recovered, 200 gallons reaching land, and 600 gallons entering Coyote Creek.
- December 12, 2019 (Event ID# 863613), a spill of an estimated 825 gallons in Mill Valley caused by a “force main” failure. Of this total amount, the District reported 200 gallons as recovered, 125 gallons reaching land, and 700 gallons reaching an un-named tributary/wetland to Coyote Creek.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (collection system) to a water of the United States without complying with any other sections of the Act.

ii. Inadequate Reporting of Discharges

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The District's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the District as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the District received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations.

Examples of the alleged violations included in the CIWQS-reported SSOs are:

- March 19, 2019 (Event ID# 856910) - the spill start time is reported as 2:45 pm, the agency notification time as 5 minutes later at 2:50 pm, the operator arrival time as 15 minutes later at 3:05 pm, and the spill end time as 5:15 pm. The estimated total volume of the spill is reported as 150 gallons, 30 gallons of which are reported as reaching an un-named tributary connecting to Coyote Creek.
- December 05, 2019 (Event ID# 863360) - the spill start time is reported as 12:48 pm, the agency notification as 7 minutes later at 12:55 pm, the operator arrival time as 7 minutes later at 1:02 pm, and the spill end time at 1:27 pm. The estimated total volume of the spill is 234 gallons, 144 gallons of which are reported as reaching a drainage channel into Coyote Creek.
- June 24, 2018 (Event ID# 848446) - the spill start time is reported as 00:00 am, the agency notification time as 10:22 am, the operator arrival time as 11:00 am, and the spill end time as 11:45 am. The estimated total volume of the spill is reported as 166 gallons, 35 gallons of which are reported as reaching a surface water.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Without correctly reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

iii. Failure to Mitigate Impacts

River Watch contends the District fails to adequately mitigate the impacts of SSOs. The District is subject to the requirements of the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements* Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the District to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical measure is the performance of adequate sampling to determine the nature and impact of the release. As the District is underestimating SSOs which reach surface waters, River Watch contends the District is not conducting sampling on most SSOs.

The EPA's "*Report to Congress on the Impacts of and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. River Watch finds no record of the District performing any analysis of the impact of SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies designated as habitat from the impacts of SSOs.

B. Failure to Warn

River Watch contends the District is understating the significance of the impacts of its CWA violations by failing to post health warning signs for numerous discharges reaching a surface water. For example, for Event ID#s 822853, 931811, 848446, 856910, 863360 and 863613, the District's response to question "35 - Visual inspection results from impacted receiving water," is "[N]o visual impact, Ill, " "OK, Water is clear," or the question is simply left unanswered.

C. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground

hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the District's collection system into groundwater hydrologically connected to surface waters including, but not limited to Coyote Creek, Richardson Bay, San Francisco Bay and the Pacific Ocean. Surface waters then become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other collection systems have verified contamination of the adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens, and other human markers such as caffeine. Any exfiltration found from the District's collection system which reaches a surface water is a discharge of a pollutant to a surface water without an NPDES permit, and therefore a violation of the CWA.

D. Impacts to Beneficial Uses

Coyote Creek, Richardson Bay, San Francisco Bay and the Pacific Ocean have many beneficial uses as defined in the Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Richardson Bay, a shallow, ecologically rich arm of San Francisco Bay, and one of the most pristine estuaries on the Pacific Coast, is home to significant estuarine resources, marsh bird life, mammalian species and marsh plants. Recognized as a high score Important Bird Area, and dedicated as a Hemispheric Reserve of the Western Shorebird Network, Richardson Bay is located on the Pacific Flyway where over one million birds, including shorebirds and waterfowl, stop in the winter months. The Richardson Bay Audubon Center and Sanctuary manages an 11-acre upland parcel directly adjacent to the Bay and 900 acres of submerged baylands. The Sanctuary is home to several endangered species including the California clapper rail, salt marsh harvest mouse and black oystercatcher, as well as a small population of California red-legged frog, which is federally listed as a threatened species and a California Species of Special Concern on the Tiburon Peninsula. The shallow waters of Richardson Bay are also home to a Pacific herring fishery.

Coyote Creek is a stream in the Richardson Bay watershed, draining Tamalpais-Homestead Valley, eastward into Richardson Bay. The stream originates on Coyote Ridge and flows 2.5 miles to the Bay at the south end of Bothin Marsh. The Coyote Creek sub-watershed includes the unincorporated communities of Tamalpais Valley, Tamalpais Valley Junction,

Manzanita and Almonte.

River Watch is extremely concerned regarding the effects of surface, underground, and unreported SSOs on critical habitat in and around the diverse and sensitive ecosystems of Coyote Creek, Richardson Bay, San Francisco Bay and the Pacific Ocean including risks to the health of those who recreate in, and consume fish from, those ecosystems.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the District and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its collection system as further described in this Notice.

The District is a Special District registered with the State of California and Marin Local Agency Formation Commission with a publicly-elected Board of Directors. The District provides sewer collection, solid waste collection, and parks and recreation services to a population of 7,000 to 10,000 residents, in approximately 2,500 households and small commercial developments in unincorporated Marin County lands in Tamalpais Valley. The majority of the sewer lines in the collection system were installed in the 1950s and 1960s. Wastewater treatment agreements are in effect with Sewerage Agencies of Southern Marin and Sausalito-Marín City Sanitary District.

The District service area is bounded on the north by Almonte and Homestead Valley Sanitary Districts, on the west and south by the Golden Gate National Recreation Area, and on the east by the ridge above Marin City and Richardson Bay.

The District is responsible for the maintenance of approximately 30 miles of sewer lines, 1 mile of which is force main pipeline. The District owns the Bell Lane Pump Station and Bob Bunce Pump Stations which pump sewage to the Sausalito-Marín City Sanitary District, and maintains Flamingo Road Pump Stations Number 1 and Number 2 which pump sewage to the Sewerage Agencies of Southern Marin system.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is July 1, 2015 to the present. This Notice includes all violations of the CWA by the District which after the range of dates covered by this Notice up to and including the end of trial. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its mailing address is 290 South Main Street, # 817, Sebastopol, California, 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground water of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@nriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications with respect to this Notice should be directed to the counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the collection system.

CONCLUSION

The violations of the CWA set forth in this Notice affect the health and enjoyment of members of River Watch who may reside and recreate in the affected community and use the affected watershed for recreation, fishing, horseback riding, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the District's

alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 (\$55,800.00 on or after January 13, 2020) per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS

Service List

Andrew Wheeler, Administrator
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✓ Mike Stoker, Regional Administrator
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Eileen Sobeck, Executive Director
State Water Resources Control Board
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